

EQUATIONS' Critique on Environmental Impact Assessment Notification, 2006

EQUATIONS
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The Ministry of Environment and Forests (MoEF) made Environmental Impact Assessment (EIA) for development projects mandatory in India in 1994. But the Ministry on 14th September 2006 brought out a new Notification which significantly changed the approach to EIA in India. Several points of contention with the EIA Notification of 1994 continue to remain unaddressed in the EIA Notification of 2006. But the biggest blow is what seems the removal of tourism related projects from requiring environmental clearance. Studies have shown Tourism to have myriad destructive impacts on ecosystems. By the Ministry's own submission, consultations on the draft Notification were held only with representatives of industry and central government agencies. State governments, panchayats and municipalities, NGOs, trade unions and local community groups were partially or completely kept out of the process. This paper critiques the EIA Notification of 2006 and its implication for tourism related destruction of the environment.

Introduction

Environmental Impact Assessment for projects was made mandatory in India in 1994 by the Ministry of Environment and Forests vide the Environment Impact Assessment Notification no. S.O.60(E), dated 27/01/1994 under the Environmental (Protection) Act, 1986.

The Ministry of Environment and Forests has brought out a new notification on 14 September 2006, which has significantly changed the approach to EIA processes in India. In the original EIA Notification of 1994, tourism (including hotels, beach resorts) was considered as a Category 1 project. That is, projects where EIA is mandatory and requires clearance from Central Government for: all tourism projects between 200m – 500m of High Water Line and at locations with an elevation of more than 1000m with investment of more than Rs.50 million were included in Schedule 1 of the EIA Notification. However, the new Notification has totally neglected Environmental Impact Assessments for tourism projects and mentions tourism only in passing.

A brief look at the EIA Notification, 1994

The EIA Notification (Item 18 of Schedule I) makes it mandatory for tourism project managers to conduct an EIA prior to being accorded permission to commence development. However the notification only states "*All tourism projects between 200m and 500 metres of High Water Line and at locations with an elevation of more than 1000 metres with investment of more than Rs.5 crores*". This places a great many tourism projects in our PAs outside the purview of the EIA notification, thus exempting them from any accountability that the notification might enforce. The bulk of the offshoot enterprises that develop are either not situated over 1000 MSL (for instance the altitude of Bandipur NP varies from 700-1400 MSL while all of Nagarhole NP is well under 1000 MSL) is of are not big enough to have an outlay of Rs. 5 crores. It is important then to overlay topographic maps of PAs with tourism development maps to determine the extent of development covered by the notification.

Just four months after the EIA Notification saw the light of day, the May 1994 amendment dealt it a body blow. This dilution (amendment) canceled the necessity of a comprehensive Environmental Impact Assessment report and instead stipulated that the project in question could simply be cleared on the basis of a Rapid Environmental Impact Assessment report (REIA).

Another loophole woven into the notification itself comes in the form of the last line of Section II. This line reads: "*In respect to items for which data are not required or is not available as per the declaration of project proponent, the project would be considered on that basis*". This could well be the basis on which the project proponent could declare non-availability of certain information that would otherwise be detrimental to the smooth passage of the EIA through the reviewing committee, the Impact Assessment Agency.

Public participation/debate in the official EIA process:

The EIA notification does not allow for public participation - it has not made it mandatory for the public to be provided with a copy of the EIA. It merely states (Schedule IV - Procedure for Public Hearing) that an executive summary of the EIA be kept in designated offices for perusal of specified parties.

The EIA notification does make a concession, almost as an afterthought, by stating (Para IV) that the half-yearly compliance reports submitted to the Impact Assessment Agency can be shared with the public “*subject to public interest*”. This however is certainly too little and too late, since such a concession would only ensure that the people, at best, would be kept informed of the deterioration of their commons – a classic case of being invited to weep over spilt milk.

Schedule II of the EIA notification lists the headings under which information has to be provided by the project proponent/s in the EIA report and Schedule III describes the composition of the expert committee for the environmental impact assessment. These have been given in annexure 1 and 2 respectively.

Critique of the EIA Notification, 2006¹

The new EIA notification was introduced by the Ministry of Environment and Forests (MoEF) on September 15 2006. This is a year after the draft notification was placed on the MoEF website, in response to which, comments were sent by several groups and organizations.

Several points of contention regarding the changes that were proposed to the EIA notification 1994 in the draft notification of 2005 remain unaddressed in the new notification. This is only to be expected as all the repeated communication to the Ministry on the problems with the existing and proposed notifications and appeals to the Ministry to consult groups and communities who have worked on and have been impacted by the decision making on large development projects, have only been ignored or rejected. The Secretary, MoEF has gone on record to state that NGOs had no substantive suggestions or concerns to raise when the draft was placed on the website and therefore were not been consulted in the process of finalization of the draft. This is a pathetic argument considering there have been groups and communities who have actively and consistently engaged with the notification from its very inception in 1994.

Firstly, the most critical concern about the new notification remains the process by which it has come to being. Consultations on the draft notification were held only with representatives of industry and central government agencies, as per the Ministry’s own submission. State governments, Panchayats and municipalities, NGOs, trade unions and local community groups were partially or completely kept out of the process. This inherent bias of the Ministry to negotiate with industry on what an environment regulation should be, clearly carries through the text of the notification as well.

The **categorization** of projects in the notification, into A and B, has been done based on “spatial extent of potential impacts on human health and natural and man made resources.” Category A projects are to be cleared by the MoEF while Category B projects are to be cleared by the State Environment Impact Assessment Authority (SEIAA).

The handing over of the responsibility of granting clearance to a large number of projects to the state governments without any system of checks and counter checks is not acceptable. In many instances, the state government is directly involved in seeking investments. Handing over the entire function of environment regulation into their hands will most certainly mean that projects are cleared indiscriminately.

The SEIAA is a body created to grant clearance at the state level. Where will this authority be housed and who will it be accountable to? Can the decisions of the Authority be challenged in the existing Environment Appellate Authority or will it be some other body? These are not known at all. Unless this is figured out and incorporated in the notification, this body cannot be allowed to grant clearances. .

Exclusion of large capacity and impact projects from EIA:

Construction projects above 1, 50, 000 sq m come under Category A. There are probably no projects of this size! Construction projects also need not go through the stages of screening or scoping because they are exempted from doing EIA studies. They also do not need to conduct the public consultation process. So they are present in the EIA notification only in so far as having to be cleared by the SEIAA on the basis of the application form. Thus this remains a category in the notification purely for cosmetic reasons.

Several large capacity projects are left out of the notification altogether. All building and construction projects with less than 20,000 sq.mtrs built up area like the Vasant Kunj Square Mall, in Delhi are now exempted from the

notification. (According to the June 2006 Rapid EIA report the total built up area is 19021.108 sq mtrs.). There are several such complexes being constructed in cities and towns today and will be totally exempt from the EIA notification.

Will thermal power projects less than 500 MW or cement plants less than 1 MTPA not require any environment clearance at all? Or will state governments follow a separate set of rules for grant of clearance to these projects since the EIA Notification does not deal with them? If indeed it is the former that is true, then this notification will in no way achieve environment impact regulation.

An important activity like tourism, which has significant impacts on ecosystems and communities has been removed from the ambit of the new EIA Notification.

What after clearance?

The new notification deals only with process of grant of environment clearance (divided into 4 stages: Screening, Scoping, Public consultation and Appraisal). And it stops there. The most critical issue of monitoring and compliance which is an integral part of the Environment Clearance regime is dealt with in precisely three sentences. There is only a mention of the six monthly compliance reports which are to be submitted by the project proponent. The EIA notification 1994 mandated the MoEF to maintain its independent monitoring report. This role of the MoEF finds no mention whatsoever in the new notification. This could mean several things. One, that the MoEF does not see the need to independently monitor the projects that it has cleared and that its function ends with granting clearance; two, that the project proponents will monitor themselves adequately.

Either of these assumptions is in sheer contrast to the experiences of compliance of projects on the ground. Project proponents are being continually pulled up by local governments for violating state and central laws and for non-compliance of clearance conditions. Also several of the Ministry's own monitoring reports indicate non compliance on which it has most often failed to take action. (eg; the Teesta- V hydroelectric project in Sikkim)

The notification is also silent on the point of who would be the monitoring agency for projects cleared by the state government. Will it be the SEIAA or will these projects be self monitored ?? It is absurd if the latter is what is expected to take place.

There is no role for local community groups to be involved in monitoring of projects.

Stage 1 –Screening:

This stage is primarily to differentiate between projects belonging to category B which are to be cleared by the SEIAA. The decision as to whether a project falling within this category needs an EIA to be conducted (B 1) or not (B 2) is to be done on the basis of the information provided by the applicant in an application (Form 1 or Form 1A in case of construction projects.). Eg; a 450 MW thermal power plant can, based on the information provided by the project proponent allowed to go through the clearance process without an EIA!

In the present situation where fraudulent EIAs have been exposed at public hearings and decisions to clear the project have also been made on the basis of such reports, it is rather ironic that the Ministry believes that any decision can be made on the basis of the application form, which may not be done after some amount of investigation by an environment consultant (as in the case of an EIA report) and does not go through any public scrutiny.

A more serious problem is that there is nothing yet in the notification or the Form 1 or 1A that could stop the SEIAA from transferring all projects to category B 2 and therefore doing away with the need for EIAs and public hearings. The notification only vaguely states that the Ministry will issue guidelines from time to time for the categorization of B 1 and B 2 projects. If most projects of Category B do end up in the B 2 list, then they will be appraised (stage 4 of the clearance process) and granted clearance on the basis of information in the application form and discretionary site visits.

Stage 2- Scoping:

Is the step to determine the various aspects that need to be studied in the EIA report. However, Construction/townships/commercial complexes/housing that fall in Item 8 category B of the schedule have been exempted from the need to do EIAs and are to be cleared on the basis of information in Form 1/Form 1A. Is it because these projects do not or cannot have any environmental impacts ?! Certainly not. Or is because it is felt that

potential environment impacts do get analysed in the conceptual plan documents of the project? An EIA for such a project if done well, is a much more comprehensive document to understand the environmental impacts of the project in its entirety. It can also offer creative ways of mitigating them to the maximum extent possible rather than relying on the standard procedures that may be possible under the pollution norms which are mostly based on cut off/upper limits.

Stage 3- Public Consultation

This stage of the EIA process is to comprise of two aspects; a public hearing process in which only local affected people can participate and a process for obtaining written comments from others who are concerned citizens

Exemption from public consultation:

There are 6 sets of activities which have been exempted from the process of public consultation completely. There is no explanation whatsoever as to why these projects have been exempted from this extremely important step of the environment clearance process. Since this is a step to ascertain "the concerns of locally affected persons and others" their exemption means that the Ministry is not interested in ascertaining the concerns of locally affected persons and others while clearing these projects.

The **Public Consultation process** as laid out in the EIA notification, 2006 is severely flawed and clearly limits public participation on the following grounds:

Availability of draft EIA report:

Only a draft EIA report will be available to the locally affected persons at the time of the public hearing. Citizens will now not get to see the final EIA document on the basis of which the decision on the project will be made. There are enough examples in the last 12 years of the existence of the EIA notification when project proponents have sought clearance on incomplete, and misleading data. The Ministry has not only failed to take punitive action against erring agencies but gone ahead and cleared projects based on these reports. This practice will only grow if the final EIA report is not open to public scrutiny.

The appendix IV states that the 'draft EIA report with the generic structure...' is to be available to the public prior to the hearing. This does not ensure that the draft report will have an adequate description of environmental impacts of the project, such that they can be understood by readers. If the draft is very rudimentary, the public hearing will be a waste of public time and money. The notification should have either laid down details of the degree of information that the draft report should contain or should have introduced clauses of punitive action if the draft allows only an ineffective public hearing due to being uninformative or less informative.

Further, the public will have no control over whether or not their inputs and concerns get incorporated in the EIA report and influence the decision making process.

The time period for which the draft EIA report will be available prior to the hearing is not mentioned in the notification. The 1994 notification mandated that it be available for a period of 30 days prior to the hearing.

Cancellation of public hearing:

This clause which requires the public hearing to be cancelled if the local conditions are not conducive is subject to severe misuse by the project proponents and regulatory authorities. This point was also raised in the comments sent by several civil society organizations to the MoEF, which have not been taken on board. The inclusion of this clause is a severe setback to the notification as it has in effect made the public hearing procedure a discretionary procedure when it was mandatory until now.

No postponement of public hearing except in exceptional circumstances and unless there is some untoward emergency:

Can the non-availability of the EIA report for enough time or inadequate draft EIA be reason for the cancellation or postponement of the public hearing? In various places, these have been the reasons why local communities have demanded the same.

Detailed documentation of the conduct of public hearings at the local level in various places indicates severe lacunae in the implementation of the public hearing process. Some of the issues that public hearings have thrown up until now, and that remain unaddressed in the new public consultation process as well are;

- *No quorum required for attendance to start the proceedings:* Does this imply that the public hearing can start with the public hearing panel being incomplete? This completely goes against the Gujarat High Court judgment on public hearings.
- *Who can attend public hearings?* The notification states that the public hearing will be primarily for the purpose of ascertaining concerns of local affected persons. Other concerned persons who have plausible stake in the environmental impacts can make submissions in writing. This clearly limits the participation of people's groups, and civil society organizations, which have over the last 12 years, raised critical concerns at the time of the public hearing. Further, if the SEAC, or EAC feels that a certain person or organization does not have a plausible stake in the environmental impacts, then they have the discretion of not accepting even a written submission from them.

Stage 4- Appraisal:

The projects which donot need to conduct EIA studies or go through public consultation will be appraised only on the basis of information in the application form and discretionary site visits.

There is no system of public participation at this stage. As a result, citizens will not get to see the final documents on the basis of which the Appraisal committees will recommend clearance to the project.

The **Screening, Scoping and Appraisal committees** donot include social scientists, ecosystem experts or NGOs. These groups were included in the composition of appraisal committees in the 1994 notification. There is also no mention of the need for women members in the committees. Letters with detailed research on past committees and their problems have been sent to the MoEF.

Grant of clearance:

The notification needs to specify as to when the clearance letter granted to a project will be made public and how this will be done.

Validity of environment clearance:

For hydroprojects, the clearance granted will now be valid for 10 years and to a maximum of 30 years for mining projects. This is a big change from the 1994 notification which allowed a validity period of 5 years. The increase in the validity period will have a big say in the impact of the project as the developer may start work on the project just before the expiry of the period by which time the parameters of the EIA study (such as demographic or ecological) may have altered significantly and made redundant the conclusions of old EIA studies.

Form 1 and EIA generic structure:

Both the form and the generic format for EIAs are lacking on several counts. Some examples are; the Impacts on Biodiversity and People's Livelihoods continue to be missing from Form 1 or format of the EIA report. This is a suggestion that has been repeatedly sent to the MoEF for over several years but continues to be ignored. Section (2) on the use of natural resources, there is only a mention of land, water and so on. In these Forests has been clubbed with Timber, limiting the ecological and biodiversity value of the same. There is no information sought on the ethnography of the people of the area and their natural resource dependencies. **Moreover there is no scope of presenting of socio economic data in Form 1.**

Fast tracking clearances at the cost of environment assessments?

The EIA notification, 2006 states that the EAC or SEAC will convey the terms of reference within 60 days of the receipt of Form 1. While the notification clearly lays down guidelines on how long it should take for each of the 4 stages to be completed for grant of environment clearance, there is no mention or record of how much minimum time must be spent on putting together a comprehensive EIA report. The quality of EIA reports was one of the major concerns with the implementation of the EIA notification from the very beginning. This has also been repeatedly pointed out to the MoEF and concerned authorities.

The quality of EIA reports was severely compromised and they were called Rapid or Single Season EIA Report. **The new notification should have specified the time needed between the grant of TOR and the completion of atleast a four season EIA report.**

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End Notes

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Annexure 1

Information required to be furnished under the EIA Report

Application Form

1. Name and Address of the project proposed
 - I. Location of the project
 - i. Name of the Place
 - ii. District, Tehsil
 - iii. Latitude/Longitude
 - iv. Nearest Airport/Railway Station
 - II. Alternate sites examined and the reasons for selecting the proposed site
 - III. Does the site conform to stipulated land use as per local land use plan
2. Objectives of the project
3. Land Requirement
 - I. Agriculture Land
 - II. Forestland and Density of vegetation.
 - III. Other (specify)
 - IV. Land use in the Catchment
 - V. Within 10 kms radius of the proposed site
 - i. Topography of the area indicating gradient, aspects and altitude
 - ii. Erodibility classification of the proposed land
 - VI. Pollution sources existing in 10 km radius and their impact on quality of air, water and land
 - VII. Distance of the nearest National Park/Sanctuary/Biosphere Reserve/Monuments/heritage site/Reserve Forest
 - VIII. Rehabilitation plan for quarries/borrow areas
 - IX. Green belt plan
 - X. Compensatory afforestation plan
4. Climate and Air Quality
 - I. Windrose at site
 - i. Max/Min/Mean annual temperature
 - ii. Frequency of inversion
 - iii. Frequency of cyclones/tornadoes/cloud burst
 - iv. Ambient air quality data
 - v. Nature & concentration of emission of SPM, Gas (CO, CO₂, NO_x, CH_n etc.) from the project
5. Water balance
 - I. Water balance at site
 - II. Lean season water availability
 - III. Water Requirement
 - IV. Source to be tapped with competing users (River, Lake, Ground, Public supply)
 - V. Water quality
 - i. Quantum of waste water to be released with treatment details
 - ii. Changes observed in quality and quantity of groundwater in the last years and present charging and extraction details
 - iii. Quantum of quality of water in the receiving body before and after disposal of solid wastes
 - iv. Quantum of waste water to be released on land and type of land
 - v. Details of reservoir water quality with necessary Catchment Treatment Plan
 - vi. Command Area Development Plan
6. Solid wastes
 - I. Nature and quantity of solid wastes generated
 - II. Solid waste disposal method
7. Noise and Vibrations
 - I. Sources of Noise and Vibrations
 - II. Ambient noise level
 - III. Noise and Vibration control measures proposed
 - IV. Subsidence problem, if any, with control measures

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8. Power requirement indicating source of supply Complete environmental details to be furnished separately, if captive power unit proposed
 9. Peak labour force to be deployed giving details of
 - I. Endemic health problems in the area due to waste water/air/soil borne diseases
 10. Number of villages and population to be displaced
 - I. Health care system existing and proposed
 - II. Rehabilitation Master Plan
 11. Risk Assessment Report and Disaster Management Plan
 - I. Report prepared as per guidelines issued by the Central Government in the MoEF from time to time
 12. Environmental Impact Assessment
 - I. Environment Management Plan
 - II. Detailed Feasibility Report
 - III. Duly filled in questionnaire
 13. Details of Environmental Management Cell

I hereby give an undertaking that the data and information given above are due to the best of my knowledge and belief and I am aware that if any part of the data/information submitted is found to be false or misleading at any stage, the project be rejected and the clearance given, if any, to the project is likely to be revoked at our risk and cost.

In respect to item for which data are not required or is not available as per the declaration of project proponent, the project would be considered on that basis.

Annexure 2

The experts team: The EIA notification (Schedule III) describes the composition of the expert committee for the environmental impact assessment. It states that the committees will consist of experts in the following disciplines:

1. Eco-system Management
2. Air/Water Pollution Control
3. Water Resource Management
4. Flora/Fauna conservation and management
5. Land Use Planning
6. Social Sciences/Rehabilitation
7. Project Appraisal
8. Ecology
9. Environmental Health
10. Subject Area Specialists
11. Representatives of NGOs/persons concerned with environmental issues
12. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector.
13. The representative of Impact Assessment Agency will act as a Member-Secretary.
14. Chairman and Members will serve in their individual capacities except those specifically nominated as representatives.
15. The Membership of a Committee shall not exceed 15.